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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 NEHMIAS MUNOZ,

4 Plaintiff,

5 v.

14 Civ. 6628 (DLC)

6 POLICE OFFICER ROBERT REID, POLICE OFFICER STEPHEN JONES,  
7 SERGEANT BRIAN FLYNN, and SERGEANT JAMES KELLY,

8 Defendants.

-----x

9 New York, N.Y.  
10 March 15, 2017  
3:30 p.m.

11 Before:

12 HON. DENISE COTE,

13 District Judge

14 APPEARANCES

15 NEHMIAS MUNOZ  
16 Pro Se Plaintiff

17 NEW YORK CITY LAW DEPARTMENT  
Attorneys for Defendants  
18 BY: ARIEL S. LICHTERMAN  
CAROLYN K. DEPOIAN

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(Case called)

THE DEPUTY CLERK: Is the plaintiff ready?

MR. MUNOZ: Yeah, but I don't have a lawyer.

THE DEPUTY CLERK: Is the defense ready?

MR. LICHTERMAN: Ariel Lichterman from the New York City Law Department for the defendants, Robert Reid, Stephen Jones, James Kelly, and Brian Flynn, your Honor.

THE COURT: I'm sorry. Can you give me your name again?

MR. LICHTERMAN: Ariel Lichterman.

THE COURT: Thank you.

MS. DEPOIAN: Good afternoon, your Honor. This is Carolyn Depoian, also from the Law Department for the same defendants.

THE COURT: Thank you so much.

Mr. Muñoz, we are going to give you a pad and a pen for you to use during this conference if you would like to.

MR. MUNOZ: OK.

THE COURT: This is our final pretrial conference before our trial which begins on Monday. I want to discuss with you and defense counsel the issues that I think are important to address in advance of that trial, to describe certain of the process that we can expect to happen during the trial, and to make sure that you and defense counsel have a chance to ask me any questions that you have that would assist

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1 you in preparing for trial.

2 Let me begin, Mr. Muñoz, by addressing that very first  
3 point you raised about the fact that you don't have a lawyer.  
4 I know that I was not the original judge assigned to this case.  
5 Judge Torres was your original judge. This case has been  
6 reassigned to me for trial. Judge Torres made several efforts  
7 to obtain a lawyer for you. Of course you had a lawyer, as I  
8 understand it, early on in the case, but that lawyer withdrew  
9 after the mediation process failed to result in a settlement  
10 among the parties. That's not uncommon. That happens  
11 frequently.

12 Judge Torres didn't stop there, though. She made  
13 several more efforts and indeed, since this case was  
14 transferred to me, we have made efforts to find an attorney for  
15 you through the work of our pro se office. I want to make sure  
16 you understand how this process works. In a criminal case,  
17 someone charged with an offense has a right to have counsel  
18 appointed to represent them. That's a constitutional right.  
19 This case is not a criminal case, it is a civil case. So when  
20 a judge asks for an attorney for a party in a civil case, they  
21 can't order an attorney to appear. They don't even have funds  
22 to pay a lawyer. They are just asking a lawyer to volunteer  
23 their services.

24 We reached out a number of times. Our pro se office  
25 has been in touch with several lawyers. They have looked at

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1 the case. They have not agreed to take the case. This case is  
2 a case you filed in 2014, and that's a few years ago now, and I  
3 have time to try this case next week. That would be your trial  
4 date. I am prepared to proceed with the trial next Monday, but  
5 if you want to proceed to trial, you would be representing  
6 yourself.

7 Do you understand what I have said to you?

8 Yes, you have a question for me. Please ask it.

9 MR. MUNOZ: OK. I understand. Can I at least get a  
10 stand-in counsel available during this procedure of trial?  
11 Because I have no whatsoever no legal knowledge whatsoever, so  
12 it's like, you know, I won't really understand everything that  
13 would be going on. It's like coming in here blindfolded.

14 THE COURT: There isn't any authority under the law  
15 for me to require an attorney to be available to assist you  
16 during the trial as standby counsel. I know in criminal cases  
17 there is, even when a criminal defendant wishes to represent  
18 himself at trial, a standby attorney being available to consult  
19 with them.

20 But let me inquire this week to see if there is some  
21 attorney who would be available to just be by your side for you  
22 to consult with, but I am not confident we'll be able to find  
23 someone. We will make some effort in that regard.

24 Is that agreeable to you?

25 MR. MUNOZ: Yes, ma'am.

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1 THE COURT: Good. We are going to go slowly here. I  
2 fully appreciate that you are not a lawyer.

3 Let me ask you, have you ever represented yourself in  
4 a trial before?

5 MR. MUNOZ: Never.

6 THE COURT: I am just going to do my best to explain  
7 things to you every step of the way. If you have questions, I  
8 want you to feel free to ask me questions. OK?

9 MR. MUNOZ: OK, ma'am.

10 THE COURT: Good. I am going to start by describing  
11 to the parties what I understand the evidence at trial is going  
12 to be, that is, what witnesses will be called, what documents  
13 will be received into evidence, what the exact issues that are  
14 being tried are, that is, what the jury is going to decide.

15 My understanding is as follows that you, Mr. Muñoz,  
16 were arrested on September 13, 2011, and that you contend that  
17 after handcuffs were placed on you at the time of that arrest,  
18 the officers used excessive force against you. That's my  
19 understanding of your claim.

20 Is that your claim?

21 MR. MUNOZ: Yes, ma'am.

22 THE COURT: Obviously under the Constitution, you have  
23 a right that you can complain about any police brutality, any  
24 use of excessive force. There's a legal definition for  
25 excessive force. I'll be giving that legal definition to the

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1 jury for them to make a decision. But in terms of the factual  
2 focus, the issue is did the police officers use excessive force  
3 against you on September 13, 2011, after handcuffs had been  
4 placed on you. It's not just did one of the officers use  
5 excessive force against you, but was any officer who was  
6 present and saw another officer using excessive force, did they  
7 fail to intervene to stop the other officer from using  
8 excessive force against you.

9 Do you understand what I've said so far?

10 MR. MUNOZ: Yes, I understand. It was actually like  
11 three of them.

12 THE COURT: Good.

13 MR. MUNOZ: It wasn't just one officer hitting on me.

14 THE COURT: Even if an individual officer you've named  
15 as a defendant here didn't actually strike you, if they had the  
16 ability to stop one of their fellow officers from striking you  
17 in a way that would amount to excessive force, they can be  
18 found liable as well, and that theory is called failure to  
19 intervene.

20 Let's make sure we agree who the defendants are here.  
21 As I understand it, there are four defendants: Police Officer  
22 Reid, Police Officer Jones, Sergeant Flynn, and Sergeant Kelly.  
23 There is one claim that will be tried, that is the excessive  
24 force claim, and with it, the failure to intervene claim  
25 against these four defendants.

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1           The injuries that you contend occurred or were  
2           inflicted on you after you were handcuffed because the officers  
3           used excessive force, as I understand, are the following:

4           There was a laceration to your left eye, a laceration to your  
5           right forearm, and a broken rib. I'm not sure if it is one rib  
6           or two ribs. Do you remember, Mr. Muñoz?

7           MR. MUNOZ: It's two fractured ribs.

8           THE COURT: Two ribs. Thank you.

9           It's my understanding that you seek damages from these  
10          four defendants because of those three injuries, is that right?

11          MR. MUNOZ: That's kind of correct, but I'm going to  
12          say that Sergeant Kelly, he wasn't the one who was involved in  
13          the excessive force. He was, I believe, just a sergeant at the  
14          time.

15          THE COURT: Was he present?

16          MR. MUNOZ: He came in afterwards, really, like when I  
17          was already seated on the sidewalk. I was never seated on the  
18          bench as they said it was. They said that they sat me on a  
19          bench. There was never no bench. They sat me on the sidewalk  
20          out on the street. So Sergeant Kelly had no participation of  
21          the excessive force.

22          THE COURT: That's helpful. I just want to make sure,  
23          because I'm making a decision right now of whether the Sergeant  
24          Kelly will have to be a defendant at trial or not. I want to  
25          make sure we address this carefully. If he was present when

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1 someone else was beating you or using excessive force against  
2 you, he could be liable for failing to stop that. Do you  
3 understand that?

4 MR. MUNOZ: I understand, but I was being beaten so  
5 hard, I couldn't really acknowledge who was hitting me. I  
6 believe that Sergeant Kelly didn't participate in the excessive  
7 force. I believe it was just all three -- all of the other  
8 officers.

9 THE COURT: You believe that Sergeant Kelly came to  
10 the scene afterwards?

11 MR. MUNOZ: Yeah, I guess, being the fact that he was  
12 the sergeant and they were just police officers. You know, he  
13 was just doing his job as a sergeant and checking on them and  
14 seeing if they were all right.

15 THE COURT: I want to, again, go slowly here because  
16 this makes a difference to you and your rights. I am  
17 understanding that you want to go to trial to get damages  
18 against Police Officer Reid, Police Officer Jones, and Sergeant  
19 Flynn. Am I correct?

20 MR. MUNOZ: Yeah. Sergeant Flynn wasn't a sergeant at  
21 the time, he was a police officer. Actually, all three of  
22 them, I believe, I'm not sure if it was the Wade or the  
23 Sandoval hearing, one of those hearings I have the minutes,  
24 I've got to get my paperwork, because they surprisingly  
25 snatched me out of my occupation job in Fishkill. I am like



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1 here surprisingly. I never knew I was going to arrive here  
2 actually Monday. So most of my paperwork I left, but I have  
3 some of it. I have to find out that they all gave three  
4 different testimonies. So in that hearing --

5 THE COURT: Well, before we end today's conference, we  
6 are going to go through a list of papers that you would like  
7 copies from defense counsel to make sure you're well prepared  
8 for this trial.

9 As I understand it, Mr. Muñoz, you agree that Sergeant  
10 Kelly can be dismissed from this case since he was not someone  
11 who used excessive force against you and was not on the scene  
12 when excessive force was being used against you; is that right?

13 MR. MUNOZ: That's correct, ma'am.

14 THE COURT: So the trial will be against three  
15 defendants, not four. As I understand it, the plaintiff had  
16 hoped, at one point at least, that one or two employees who  
17 were at the store where he was arrested could be identified and  
18 perhaps participate in this case as witnesses. I've reviewed  
19 the history of the discovery process, including several of the  
20 transcripts of conferences that were held by the magistrate  
21 judge who was supervising discovery, Magistrate Judge Freeman  
22 in particular. Let me see if I can give you the dates of the  
23 transcripts that I read that were very helpful to me.

24 I read in particular the transcript of December 18,  
25 2015, and January 28, 2016. I've also looked at the letter

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1 that the City wrote to Judge Torres on July 18, 2016. This  
2 describes the efforts that were made to try to locate a store  
3 employee who may have been present in the store on  
4 September 13, 2011.

5 I could give detailed findings with respect to what  
6 happened procedurally in this case, and I'm prepared to do that  
7 if that would be helpful to anyone, but the bottom line, as I  
8 understand it, is that no employee in the store has ever been  
9 identified as someone who was present on September 13, 2011,  
10 except for someone who is no longer in the country and who no  
11 longer owns the store.

12 Is that your understanding, Mr. Muñoz, as well?

13 MR. MUNOZ: Actually, he's supposed to be the owner of  
14 the store. He was never inside of the store that day. He just  
15 happened to cooperate with the officers with going by the story  
16 that they were saying to him.

17 There was two witnesses. There was a Mexican guy and  
18 there was a Dominican guy. And for some reason, I didn't know  
19 their names, because I am not really too familiar with -- I'm  
20 not too familiar with them. I do shop in that store, so I know  
21 the store very well.

22 The store owner, I guess when I shot him the nine  
23 questions, because Magistrate Freeman was trying to lead the  
24 counselor over here, Mr. Lichterman, to locate him so they can  
25 bring him in to question him, so I could be able to question

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1 him, but he never showed up. I guess he sold the business and  
2 he flew to his country or whatever, and those questions were  
3 never answered. One of the questions that I had shot to him in  
4 the nine questions was: What happened to the tape recordings,  
5 the video recordings of the civilians of the store? Because  
6 that store has civilian cameras on it. He never answered it.  
7 I guess that video was, say, gone. That was one of the  
8 questions I asked him. He was never present at the store, I  
9 know that for a fact.

10 THE COURT: Despite the lengthy period of discovery,  
11 fact discovery, and it ran for about nine months. It may have  
12 run longer. It was first supposed to end in October, then it  
13 was extended to December, and then January, and ultimately the  
14 end of February. The witnesses were not identified. Efforts  
15 were made, so they're not going to be witnesses at the trial.  
16 They are unknown to us.

17 The next potential group of witnesses are medical  
18 witnesses and I think, if I understand correctly reading all  
19 these papers, what is really critical here is that certain  
20 medical records be received into evidence to reflect the  
21 injuries that you sustained on September 13, 2011, which are  
22 important, Mr. Muñoz, to the claim for damages that you're  
23 making.

24 In the normal course, and this is true in lots of  
25 trials, the parties just agree to have the documents received

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1 into evidence, and then the documents are provided to the jury  
2 and the parties are able to make their arguments based on what  
3 the documents say. I am going to assume, and we are going to  
4 turn to this for a minute, there are going to be no medical  
5 witnesses, but that medical records will be received into  
6 evidence and that we will discuss with each other precisely  
7 which portions of the medical records will be received into  
8 evidence.

9 Is that agreeable, Mr. Muñoz?

10 MR. MUNOZ: That's OK with me, ma'am.

11 THE COURT: Good.

12 Is that agreeable, Mr. Lichterman?

13 MR. LICHTERMAN: Yes, your Honor.

14 THE COURT: Let's turn specifically to the medical  
15 records. Have defense counsel brought what they believe are  
16 the relevant medical records to court today?

17 MR. LICHTERMAN: Yes, your Honor. We actually brought  
18 all of the medical records in case you wanted to look at them.  
19 Particularly what we think are the records at issue are the  
20 ones directly related to the injuries that Mr. Muñoz is  
21 claiming in the case that took place right after the incident.

22 THE COURT: Have you identified what passages from  
23 those medical records you believe are relevant to the  
24 plaintiff's claims, again, the two lacerations and the two  
25 broken ribs?

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1 MR. LICHTERMAN: We can identify those pages.  
2 Offhand, I don't have the specific page references. I can list  
3 a page range in which those injuries are discussed.

4 THE COURT: Have you looked at and have you marked up  
5 a copy of those specific pages?

6 MR. LICHTERMAN: We have not marked up a copy.

7 THE COURT: On any page of the document, there may be  
8 material that is relevant and material that is irrelevant. For  
9 instance, somebody's Social Security number is not relevant.

10 Can I ask you, Mr. Lichterman, to identify those pages  
11 and passages from the medical records that you believe are  
12 relevant to the plaintiff's claim of injury here and including  
13 what he was treated for and complained of on the date of his  
14 arrest and treatment records reflecting treatment for those  
15 injuries over time. For instance, if there are broken ribs,  
16 they may have been treated over a matter of weeks or months, I  
17 have no idea, but any records that reflect that treatment for  
18 those injuries as well.

19 Can you do that for me?

20 MR. LICHTERMAN: Yes, your Honor.

21 THE COURT: Can you provide a set of those records to  
22 the plaintiff by tomorrow?

23 MR. LICHTERMAN: Yes, your Honor.

24 THE COURT: Mr. Muñoz, what you're going to get  
25 delivered to you tomorrow is the passages from the medical

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1 records, your medical records, that the defendants believe are  
2 relevant to the two lacerations and the two broken ribs. Then  
3 if you agree that all of that is relevant, then we'll just have  
4 a stipulation, and those records will come into evidence at  
5 trial and the jury will be able to see them.

6 If you believe they're incomplete in any way -- and  
7 perhaps it would be helpful, actually, for there to be a  
8 discussion after this conference is over between defense  
9 counsel and you, Mr. Muñoz, to make sure that you're on the  
10 same wavelength as to what is relevant -- I want you to feel  
11 free to tell Mr. Lichterman, and we'll work out any dispute  
12 that might exist with respect to that.

13 Is that agreeable?

14 MR. MUNOZ: That's agreeable, ma'am.

15 THE COURT: Good. The witnesses at trial are going to  
16 be the plaintiff and the three defendants, Reid, Jones and  
17 Flynn.

18 Let's go to the issue --

19 MR. LICHTERMAN: Your Honor, if I may briefly?

20 Defense counsel would like to call Sergeant Kelly as a  
21 witness. We believe he has got some relevant information, even  
22 though he is now not a defendant going forward.

23 THE COURT: Mr. Lichterman, is it the defense position  
24 that he was present on the scene at the time the plaintiff was  
25 handcuffed?

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1 MR. LICHTERMAN: Yes, your Honor.

2 THE COURT: I am not cutting him out then of this  
3 case. He will remain a defendant.

4 MR. LICHTERMAN: Yes, your Honor.

5 THE COURT: We are going to have a four-defendant  
6 case.

7 MR. LICHTERMAN: Yes, your Honor.

8 THE COURT: Let's turn to the exhibit list. We have a  
9 list of the plaintiff's exhibits being a photograph of the  
10 plaintiff taken after the incident. There is an objection by  
11 the defendants as to relevance and authenticity. I don't  
12 understand that objection.

13 MR. LICHTERMAN: Your Honor, if the photos are the  
14 same photographs that we included on our exhibit list, we don't  
15 have an objection to them. However, we're not clear exactly  
16 how plaintiff intends to use them, which was those were the two  
17 basic reasons for the objection.

18 THE COURT: Do you have copies of the photographs with  
19 you?

20 MR. LICHTERMAN: Yes, your Honor.

21 THE COURT: After this conference, show the plaintiff  
22 the photographs, see if he thinks there are any other  
23 photographs that he wants to introduce. Try to work it out  
24 with him. But I don't want objections that make no sense. I  
25 think we worked through the medical records. The parties are

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1 in agreement that they are admissible.

2 Mr. Muñoz, I understand from the defendants' pretrial  
3 statement that you want to offer an NYPD internal investigation  
4 report. That report is not generally admissible. You have to  
5 have a witness who testifies to something they saw, heard, felt  
6 or said. Some investigator's report about what they found in  
7 investigation is not generally admissible at trial. Do you  
8 understand that?

9 MR. MUNOZ: You're talking to me, ma'am?

10 THE COURT: Yes, I am, Mr. Muñoz.

11 MR. MUNOZ: Those are the reporters that came in  
12 supposedly and never had no type of audio. Is that what you're  
13 referring to?

14 THE COURT: This wasn't in your pretrial statement.  
15 Let me ask defense counsel. On page three of the defendants'  
16 pretrial statement, you have a list of plaintiff's exhibits.  
17 Where did you get that from?

18 MR. LICHTERMAN: That was from plaintiff's pretrial  
19 statement. On page two of the plaintiff's pretrial statement,  
20 under the first subheading, item number three lists NYPD  
21 internal investigation reports.

22 THE COURT: Thank you. That is very helpful.

23 Mr. Muñoz, what NYPD internal investigation report do  
24 you wish to offer into evidence?

25 MR. MUNOZ: I think that's the one where they came in



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1 it's supposed to be the bureau report investigation paper.  
2 There is only three signatures on it. When I was incarcerated,  
3 they came up with papers. They never had no type of audio,  
4 none of that. So they took some of my story and they took some  
5 of their story. They fabricated the internal affairs bureau  
6 report. That is how I saw it.

7 THE COURT: OK.

8 MR. MUNOZ: The attorney that was representing me, I  
9 believe his name was Mr. Gregory Mouton, Jr., that made him  
10 withdrew on my case automatically. He said I was contradicting  
11 myself through that fabricated report. They never came into  
12 the precinct with no audio or nothing like that. They just  
13 came with pen and paper.

14 THE COURT: As I understand it, Mr. Muñoz, you don't  
15 really want that report to come in at this trial because you  
16 think it contains falsehoods; is that right?

17 MR. MUNOZ: I'm really not sure. Like, I'm kind of  
18 lost right here right now.

19 And also about the situation when you're saying  
20 "objection," what do you mean when you say "objection?" Is it  
21 permissible or not permissible? Is it allowed? When you were  
22 saying Mr. Lichterman was trying to object to pictures from the  
23 hospital, what does that mean? Does that mean that they are  
24 permissible? Are they going to be allowed or not? I have a  
25 copy of all those pictures when I was hospitalized, and they

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1 don't look all that great.

2 THE COURT: I have a document, and I think you were  
3 sent a copy of it, which is entitled defendants' pretrial  
4 statement.

5 Do you have an extra copy, Mr. Lichterman --

6 MR. LICHTERMAN: I do, your Honor.

7 THE COURT: -- for the plaintiff?

8 Could you hand him that and turn to page three for him  
9 so he knows what I'm talking about.

10 You'll see in the middle of page three, they have a  
11 list of your exhibits. Then next to that, where they object,  
12 and then next to that, the reason or basis for objection. Do  
13 you see that?

14 MR. MUNOZ: Yeah, I see it, ma'am.

15 THE COURT: I just ruled that the photographs will be  
16 admitted at trial.

17 MR. MUNOZ: OK.

18 THE COURT: After this conference, you're going to  
19 talk with defense counsel and make sure that you agree as to  
20 what the complete set of photographs should come in.

21 MR. MUNOZ: OK.

22 THE COURT: If there is any disagreement, of course  
23 I'll hear from you and make a ruling. Right now the  
24 photographs taken of you after the incident are going to come  
25 in at trial.

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1           The second exhibit are the medical reports. We  
2       discussed that too. Those are coming in at trial, and you and  
3       defense counsel are going to discuss precisely which pages and  
4       which passages should come in to make sure there is no  
5       disagreement there as well. OK?

6           MR. MUNOZ: OK.

7           THE COURT: We're up to item three, the NYPD internal  
8       investigation report. You're going to have the four defendants  
9       here to be able to ask them questions before the jury at trial.  
10      Of course, defense counsel can ask you questions in front of  
11      the jury when you're on the witness stand during the trial. Do  
12      you understand that?

13          MR. MUNOZ: Yes, ma'am.

14          THE COURT: That's the kind of evidence that is  
15      appropriate for the jury to hear and consider. Somebody's  
16      report created after the fact is not generally admissible to  
17      show what happened in the event. Only those people who were  
18      involved in the event can really testify about it. Do you  
19      understand that?

20          MR. MUNOZ: I understand.

21          THE COURT: Generally speaking, that kind of report,  
22      the NYPD internal investigation report, is not appropriate as a  
23      trial exhibit. Do you understand that?

24          MR. MUNOZ: I understand, ma'am.

25          THE COURT: Good. If you have a document that shows,

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1 just hypothetically -- I haven't seen this report, I am just  
2 giving you an example -- let's say that report included a  
3 statement from Officer Reid and you thought that statement  
4 contradicted his trial testimony, you could look at that  
5 report, read it to yourself, and ask Officer Reid at trial,  
6 Officer Reid, didn't you tell an investigator a month after  
7 this accident something very different? Didn't you tell them  
8 XYZ?

9 Do you understand what I'm saying?

10 MR. MUNOZ: Yes, I understand, ma'am.

11 THE COURT: But the report itself does not come into  
12 evidence. OK?

13 MR. MUNOZ: OK.

14 THE COURT: The next three exhibits that you've  
15 discussed, the videotape and two sets of photographs, as I  
16 understand it both from you and from defense counsel, they do  
17 not exist. They were never located, so those cannot be offered  
18 as evidence. OK?

19 MR. MUNOZ: I mean, why they can't be presented, when  
20 that store has cameras and the civilian cameras? I believe  
21 they lead to the precinct.

22 THE COURT: Well, during discovery there was an  
23 opportunity to try to obtain evidence, and no photographs or  
24 videotape from the scene of the accident was ever located. So  
25 they are not available to offer as evidence at this trial. OK?

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1 MR. MUNOZ: I believe that evidence was destroyed or  
2 taken by these officers. That's just my belief.

3 THE COURT: I appreciate that's your belief.

4 Mr. Lichterman, do you want to respond to that with  
5 respect to any search made for the videotape or the photographs  
6 at the store?

7 MR. LICHTERMAN: Yes, your Honor. A search was  
8 conducted. Numerous efforts were made to try and locate and  
9 identify any video footage related to the incident. Our  
10 understanding is there weren't any actual recording devices in  
11 the store at the time of the incident. I think there may have  
12 been a camera with a live feed, but no recording devices.

13 THE COURT: So it didn't store images?

14 MR. LICHTERMAN: Correct.

15 THE COURT: Then we go to the last plaintiff's  
16 exhibit, which is transcripts of testimony of Defendants Reid,  
17 Jones, and Flynn at pretrial proceedings.

18 Mr. Lichterman, what does this refer to?

19 MR. LICHTERMAN: I believe it refers to one of the  
20 pretrial proceedings in which --

21 THE COURT: What pretrial proceeding? Were they  
22 deposed in this case?

23 MR. LICHTERMAN: No, in the underlying criminal case.  
24 They were not deposed in this case. Pretrial proceedings in  
25 the underlying criminal case. Officer Reid and Officer Flynn

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1 had testified during those proceedings, and I believe that is  
2 the reference to this. I don't believe that Officer Jones  
3 testified in any of the criminal proceedings.

4 THE COURT: What kind of hearing was it that required  
5 their testimony? What was the issue?

6 MR. LICHTERMAN: I don't recall offhand exactly what  
7 the issue was. I believe it was some type of -- it was related  
8 to admitting some evidence. I don't recall the specifics  
9 exactly.

10 THE COURT: Do you have copies of that?

11 MR. LICHTERMAN: I do.

12 THE COURT: I want you to review them. I want you to  
13 get copies of that testimony to the plaintiff for the trial.

14 MR. LICHTERMAN: Yes, your Honor.

15 THE COURT: I want you to be in a position to explain  
16 to me what the subject of the Reid and Flynn pretrial,  
17 pre-criminal trial testimony involved.

18 MR. LICHTERMAN: Yes, your Honor.

19 THE COURT: Mr. Muñoz, we will get you copies of this  
20 testimony. Do you have it with you already, Mr. Muñoz?

21 MR. MUNOZ: I'm not sure. Once again, like I said,  
22 they snatched me, really they surprised me at Fishkill  
23 Correctional Facility. The date was supposed to be March 20.  
24 I got two letters, two pieces of mail here, and it's from  
25 Mr. Lichterman and Ms. Depoian and Zach Carter, right. They

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1 were saying that they were supposed to reschedule. It was  
2 supposed to be, from my knowledge, there was going to be a  
3 legal phone conference. I didn't know it was going to be a  
4 physical one.

5 So they surprisingly took me out of work Monday and  
6 brought me here. I've been here ever since Monday. So I had  
7 two correction, two New York State correction officers with me,  
8 and I left all my belongings. Everything was just a surprise  
9 for me. I had to grab what I can grab, so I had a couple of  
10 law work with one bag, but the rest was scattered around  
11 because I am trying to study this case. I am not sure. I  
12 don't know what I have by memory.

13 THE COURT: I'll make sure defense counsel gives you  
14 additional copies. You can offer at trial prior sworn  
15 testimony or prior statements of a defendant, but it has to be  
16 relevant to the issues on trial, just like they can offer at  
17 trial prior statements of yours that are relevant to the issues  
18 at trial. Keep that in mind.

19 Indeed, the defendants, as one of their exhibits, want  
20 to offer the deposition that they took of you in this case. To  
21 the extent there are passages in prior testimony and a court  
22 hearing or in a deposition by one of the parties, then those  
23 can be offered at trial by the adversary, to the extent they're  
24 relevant. You can also refer to that testimony in examining a  
25 witness. If they say something inconsistent or if you want

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1       them to admit that they said some fact in the past, you can  
2       refer to that as well.

3               Let's turn to the issue of precisely what medical  
4       records might be relevant here. As I understand it, the most  
5       relevant medical records are the records from Jacobi Hospital.  
6       There are also references in the parties' submissions to  
7       records from the New York City correctional facility and  
8       Medicaid records.

9               Mr. Lichterman, do the correctional health records or  
10       the Medicaid records refer in any way to the two lacerations or  
11       broken ribs?

12              MR. LICHTERMAN: No, they do not, your Honor.

13              THE COURT: Mr. Muñoz, do you think that the  
14       correctional health records or the Medicaid records refer to  
15       the two lacerations or the broken ribs?

16              MR. MUNOZ: Jacobi Hospital has medical records of all  
17       my injuries when I was --

18              THE COURT: We are going to admit the Jacobi Hospital  
19       records.

20              MR. MUNOZ: When I was in Rikers Island, because I had  
21       did a crime, so I am incarcerated. I am a prisoner. I was in  
22       Rikers Island. I was an inmate there. They attended me. They  
23       gave me medication. They told me my two ribs were fractured.  
24       They had to heal on their own, really. The fracture is what  
25       healed on its own. I already had the stitches on my left eye



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1 and my right arm, which they removed from my left eye and  
2 removed from my right arm. There has got to be medical records  
3 at Rikers Island that they obtained my stitches. I can't take  
4 my own stitches out myself, so there has to be medical records  
5 that I have those injuries.

6 THE COURT: Mr. Lichterman, I would ask you to review  
7 the records from the the correctional facility for plaintiff's  
8 medical care in the weeks following the date of the injury here  
9 and try to identify any passages that may be relevant and share  
10 those with the plaintiff. Will you do that?

11 MR. LICHTERMAN: Yes, your Honor.

12 THE COURT: Let's turn to the defendants' exhibit  
13 list. They also want to offer the relevant photographs of the  
14 plaintiff and the plaintiff's deposition. We have already  
15 talked about those issues. They want to offer the transcripts  
16 of the plaintiff's testimony before the internal affairs issue.  
17 I assume that is about this incident, is that right?

18 MR. LICHTERMAN: That is right, your Honor.

19 THE COURT: That would be admissible. Then you list  
20 the audio recording of the plaintiff's testimony. Is that the  
21 same testimony as reflected in the transcript?

22 MR. LICHTERMAN: Yes, it is, your Honor.

23 THE COURT: Is the audio recording difficult to  
24 understand when listening to it?

25 MR. LICHTERMAN: You can hear the voices. There is

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1 some background noise and such, but you can make it out. The  
2 transcript was made from the audio, so to the extent anything  
3 is not clear, the transcript would make it clear.

4 THE COURT: I want you to share with the plaintiff  
5 this week those portions. I want you to give him a copy of the  
6 complete transcript and mark those portions you want to offer  
7 at trial as an exhibit.

8 MR. LICHTERMAN: Yes, your Honor.

9 THE COURT: Mr. Muñoz, you're going to get the  
10 transcript of all of your testimony both from the deposition  
11 and from the internal affairs bureau testimony, and the defense  
12 counsel are going to mark which passages they want to read to  
13 the jury or provide to the jury.

14 If you think there are other related passages that  
15 should be offered as well, you'll have a chance to point those  
16 out to defense counsel because there's a doctrine about  
17 completeness. If you give the jury some evidence on a topic,  
18 you have to give them all the evidence on that topic. You  
19 can't just give one sentence when there are two sentences about  
20 that topic. Do you understand what I'm saying?

21 MR. MUNOZ: I understand, ma'am.

22 Now, back to the audio, which audio is he referring  
23 to? Is he referring to the audio of the internal affairs  
24 bureau report? Is he referring to that audio that he has to  
25 provide?

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1 THE COURT: He is referring to the audio of the  
2 internal affairs bureau inquiry, but they have a transcript of  
3 what they believe the audio reads or says. I don't know what  
4 recording equipment you have available to you in the prison. I  
5 know you can get a copy of the transcript.

6 MR. MUNOZ: The reason why I'm bringing that up is  
7 because if it's in the first bureau report, if they are  
8 supposed to come interview a prisoner or the word inmate, as  
9 I am, and they are supposed to let me see the video, if it's a  
10 hidden video, hidden audio, because at the time when they came,  
11 I did not see them record me or I didn't see a tape recorder on  
12 the desk or nothing like that.

13 What I'm trying to get at is, they came with pen and  
14 paper, so how can there be an audio? If there was an audiotape  
15 recording of my voice, it must have been hidden, and I don't  
16 think that is kind of -- how do you say -- what's another word  
17 for legit?

18 THE COURT: Fair?

19 MR. MUNOZ: Yeah. I don't think that's fair.

20 If you're supposed to interview me, you are supposed  
21 to be truthful to me and tell me I am going to record you. And  
22 it's like right now, in the prison where I'm at, if I catch a  
23 disciplinary, the lieutenant puts out a recorder and he records  
24 me. It is a visible one. If there is an audio and I am saying  
25 I did not see one, then it must have been on hidden audio

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1 because they -- I saw them with pen and paper. I did not see  
2 no audio. It wasn't a visible one. If there was one, I don't  
3 think that was fair.

4 THE COURT: Well, can you tell me, Mr. Lichterman,  
5 does the transcript or the audio recording itself reflect  
6 notice to the plaintiff that is a recording is being made?

7 MR. LICHTERMAN: I don't recall specifically whether  
8 they mentioned that was being recorded. They did identify,  
9 that I do recall, that plaintiff was giving a statement to the  
10 internal affairs bureau related to the incident. We did  
11 produce a copy of it to plaintiff during the discovery.

12 THE COURT: It occurs to me, Mr. Lichterman, that some  
13 of these issues are really admissibility issues in terms of  
14 authentication. Documents can be used to cross-examine a party  
15 without being received in evidence, obviously. Perhaps that is  
16 what we should do with respect to the plaintiff's deposition  
17 and the transcript of the internal affairs bureau, unless you  
18 have a witness who could authenticate them or get an agreement  
19 from the plaintiff they're coming into evidence. Do you  
20 understand that I'm saying?

21 MR. LICHTERMAN: Yes, your Honor. Our intention, I  
22 believe, is to use them primarily for impeachment purposes.

23 THE COURT: Fine. Your next exhibit is the grand jury  
24 indictment. I don't believe that is admissible at trial. Then  
25 you have the Jacobi Hospital records. We have already

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1 discussed those. Everyone agrees those should come in. Then  
2 you list psychological and drug treatment records. I don't  
3 know what those are specifically.

4 MR. LICHTERMAN: Yes, your Honor. Plaintiff has  
5 various mental illnesses that he testified about related to  
6 this case. We believe that those, both about diagnosis of his  
7 mental illnesses as well as treatment and medications and such,  
8 including for drug treatment, directly goes to the heart of the  
9 issues in this case.

10 THE COURT: But I need to know, and the plaintiff  
11 needs to know more than I do, precisely what records you're  
12 referring to. What period of time? What providers? Whose  
13 records? Do you have copies of those that you plan to offer?

14 MR. LICHTERMAN: I do, your Honor.

15 THE COURT: From what period of time? What is the  
16 date spread?

17 MR. LICHTERMAN: I believe it was a few years prior to  
18 the incident up to a few years after the incident. There were  
19 a few different providers. During the course of discovery,  
20 Judge Freeman had limited access to what defendants could  
21 access.

22 THE COURT: I read that, but you don't get to offer  
23 into evidence at trial everything you get discovery on. You  
24 need to isolate precisely what records you want to offer at  
25 trial and share those with the plaintiff.

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1 Do you have precisely what records you want and what  
2 providers?

3 MR. LICHTERMAN: We've identified the group of  
4 documents. Primarily we want to use these documents for  
5 impeachment purposes, again, to the extent plaintiff, depending  
6 on his testimony in the case.

7 THE COURT: I don't need to rule on admissibility of  
8 impeachment materials. So it's more impeachment purposes.  
9 It's fine. We can move on.

10 The next thing that is listed as a defendants'  
11 exhibit, that is an arrest report. That is not admissible.  
12 That is in evidence as a document at trial. The next record is  
13 an NYPD complaint report. That is not admissible. The next  
14 record is a certificate of disposition. Is that for the armed  
15 robbery here?

16 MR. LICHTERMAN: Yes, your Honor.

17 THE COURT: That would be admissible.

18 MR. MUNOZ: Your Honor, can I interject, with all due  
19 respect?

20 THE COURT: Yes.

21 MR. MUNOZ: The documents that he is trying to provide  
22 on the psychiatric issues are programs that I was, when I was  
23 out in society, that I was in those programs because I was on  
24 parole. I was in sort of like a mental illness program where  
25 you gave your freedom and you have to abide by the rules, and

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1 one of their rules were for me to go to an outpatient -- it's  
2 an outpatient mental illness program. Most of the programs  
3 that I was there, at the times I was taking medications, they  
4 were all past way before the incident of the date that I did  
5 the crime. However, I was still on psychiatric medication that  
6 was not taken. There were -- actually, this was kind of  
7 lowered. I knew exactly who I was, how I got on the train,  
8 etc., etc. The medications that I was taking didn't make me  
9 malfunction. I was functioning very well.

10 Now, the other issue about the drugs, that's what the  
11 program was about. That is why I was going to the program, so  
12 I could get cleaned up, because at that time, I was active in  
13 using drugs.

14 THE COURT: Thank you. The defendants will be able to  
15 inquire about your mental condition, including any psychiatric  
16 medications you were on or supposed to be taken at or around  
17 the time of the incident of September 2011, as well as any  
18 illegal drug use at or around that time, because obviously your  
19 mental state could have affected your ability to, first, even  
20 remember what happened at the date, if you were not able to  
21 think clearly or under the influence of drugs inappropriately.

22 Similarly, with respect to the time of the trial this  
23 week, are you taking medication now?

24 MR. MUNOZ: I am no longer taking psychiatric  
25 medications, ma'am. I am just on diabetic medication and I

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1 also take asthma medications. Other than that, no.

2 THE COURT: I need to understand, Mr. Lichterman, with  
3 precision what you want to establish at trial with respect to  
4 the plaintiff's mental state on or around September 2011.

5 MR. LICHTERMAN: Yes, your Honor.

6 THE COURT: I need dates, I need medications, I need  
7 diagnoses. Do you have those for me now?

8 MR. LICHTERMAN: We have his diagnoses and  
9 medications. I don't have the specific page references.

10 THE COURT: Do you have the dates?

11 MR. LICHTERMAN: At the time, it's our understanding  
12 that at the time of this incident, he had current diagnoses for  
13 paranoid schizophrenia, anxiety, depression, and substance and  
14 drug abuse.

15 THE COURT: I think what I need is precision here. I  
16 need to understand and the plaintiff needs to understand what  
17 you're basing that on is diagnosis by whom, when, what  
18 medications, how this relates to September of 2011. Do you  
19 understand what I'm saying?

20 MR. LICHTERMAN: Yes, your Honor.

21 THE COURT: Can you get me a letter tomorrow,  
22 Thursday, with that precise description?

23 MR. LICHTERMAN: Yes, your Honor.

24 THE COURT: Thank you.

25 The next thing you want to offer is the plea



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1 allocation. I take it that's the plea to the armed robbery  
2 that is the subject of the certificate of disposition, is that  
3 right?

4 MR. LICHTERMAN: Yes, your Honor.

5 THE COURT: The plea allocution does not come in. If  
6 you believe that there is something precisely in the plea  
7 allocution to add beyond the certificate of disposition, you're  
8 going to have to justify that to me.

9 The gun, I think that would be admissible. It's part  
10 of the story of what happened at the time of arrest and just  
11 preceding the alleged use of excessive force.

12 The Sprint report, I take it that's the 911 call that  
13 required the officers to respond to the scene; is that right?

14 MR. LICHTERMAN: Yes, your Honor.

15 THE COURT: Do you have a transcript of it?

16 MR. LICHTERMAN: Yes, your Honor.

17 THE COURT: Do you have one to hand up for me and do  
18 you have one for the plaintiff?

19 MR. LICHTERMAN: We do.

20 THE COURT: You can hand that to my clerk and hand  
21 that to the plaintiff.

22 MR. LICHTERMAN: I only have one copy on me.

23 THE COURT: Give it to the plaintiff then. I'll need  
24 a copy too in order to rule on these things.

25 MR. MUNOZ: Your Honor, can I interject?

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1 THE COURT: Yes.

2 MR. MUNOZ: Mr. Lichterman sent me a copy of a Sprint  
3 form. I guess it was the individual who I robbed, and it had  
4 nothing on it. It just said Sprint 911, that was it. It had  
5 no type of writing on it or nothing like that.

6 THE COURT: Well, he is going to give you another copy  
7 right now.

8 Mr. Lichterman, you're going to provide me a copy  
9 tomorrow?

10 MR. LICHTERMAN: Yes, your Honor.

11 THE COURT: The plaintiff's complaint, I don't think  
12 that is coming into evidence, or the amended complaint or the  
13 plaintiff's memorandum of law. These last three exhibits might  
14 theoretically be used for impeachment purposes, but they are  
15 not going to being admitted by themselves as defense exhibits.  
16 All right?

17 MR. LICHTERMAN: Yes, your Honor.

18 THE COURT: Let me read for you what I am going to  
19 instruct the jury at the time we're choosing the jury. I would  
20 like everyone to listen carefully to see if what I'm about to  
21 tell the jury on Monday morning seems accurate and appropriate  
22 to you. It is a little bit long, so I am going to read it  
23 slowly once. Don't try to take it all down. Then I'll read it  
24 again and pause. I am going to read this twice.

25 The plaintiff in this case, that is the person

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1 bringing the claims, is Nehmias Muñoz. Mr. Muñoz, do you  
2 pronounce your name Nehmias?

3 MR. MUNOZ: It is Nehemiah in English and it is  
4 Nehmias in español.

5 THE COURT: Nehmias?

6 MR. MUNOZ: Nehmias it is in Spanish and the English,  
7 biblical name is Nehemiah in English, and Nehmias in español.

8 THE COURT: Nehmias Muñoz. His claims arise out of  
9 events that occurred on September 13, 2011, in the Park Chester  
10 area of the Bronx. On that day he committed an armed robbery  
11 and was arrested. At the time of the arrest, the plaintiff had  
12 a gun. He later pleaded guilty to robbery. These events are  
13 not in dispute at this trial. This trial concerns something  
14 else. Mr. Muñoz asserts that after the arresting officers had  
15 subdued him and placed handcuffs on him, he was beaten and  
16 injured. He contends that the injuries he sustained from that  
17 beating caused lacerations and broken ribs. He has sued the  
18 four police officers who were present at the time of his arrest  
19 to recover damages from them for those injuries.

20 So far does that seem right, Mr. Muñoz?

21 MR. MUNOZ: Yeah, that seems to be right.

22 THE COURT: I am going to continue then.

23 There will also be evidence introduced at trial that  
24 Mr. Muñoz had received treatment for a drug addiction and  
25 mental health problems.

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1           This I am going to revise once I get a statement from  
2 the defendants that I more clearly understand what may be more  
3 admissible. I am continuing now.

4           Every person, whether they committed a crime or not  
5 and whether they have health problems or not, is protected by  
6 our Constitution. The police may not use excessive force  
7 against anyone in making arrests. While it may be necessary to  
8 use force in making an arrest, any force used at the time of an  
9 arrest must be reasonable in light of the facts and  
10 circumstances that existed at the time of the arrest. The jury  
11 chosen in this trial must decide whether the police used  
12 excessive force against Mr. Muñoz, and if they did, whether any  
13 injuries that Mr. Muñoz may have sustained at the time of his  
14 arrest were caused by the use of that excessive force.

15           Mr. Muñoz is proceeding pro se, that is, representing  
16 himself. He is currently incarcerated as a result of his  
17 robbery conviction. I instruct you that the protections  
18 provided by our Constitution apply to sentenced prisoners just  
19 as much as they apply to those who never committed a crime and  
20 who are not incarcerated. Every person in this country is  
21 entitled to be free from the excessive use of force by the  
22 police. In addition, every person who believes that he has a  
23 claim that can be redressed in court is entitled to bring a  
24 lawsuit and represent himself in that lawsuit. You are not to  
25 treat Mr. Muñoz any differently than you would any other

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1 litigant simply because he is representing himself. His claims  
2 arise from a time when he committed a crime. He is currently  
3 incarcerated. All litigants in this court are equal and all  
4 are entitled to the full protection of our law.

5 This case concerns events that occurred on  
6 September 13, 2011. It is not about other incidents on other  
7 dates concerning other individuals in which the police have  
8 been accused of using excessive force. If chosen as a juror,  
9 you must base your verdict solely on the evidence received at  
10 this trial regarding the plaintiff's claim that the defendants  
11 used excessive force against him on September 13th, 2011, and  
12 in doing so, injured him on that day.

13 Now, I said I would read this a second time, but we'll  
14 put that off until Monday because it's already getting late and  
15 we have a lot more to cover. I am going to give you a second  
16 chance to request changes.

17 So far, Mr. Muñoz, did what I read sound OK to you?

18 MR. MUNOZ: Yes, ma'am. But I also want to address  
19 also, due to the fact for my injuries, now my left eye, my  
20 vision is not all that great. I lost a lot of vision to my  
21 left eye. Basically, I need reading glasses. I was all right  
22 a couple years when I started losing my vision. And my left  
23 knee is not all that great either. That's due to the injuries,  
24 because when I got through the excessive force, they never  
25 checked my legs. They only checked from my waist up. I just

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1 wanted to put that, that is also in New York State DOCS  
2 medical, on my medical. Other than that, everything, it's OK.  
3 So far, so good.

4 THE COURT: Mr. Lichterman.

5 MR. LICHTERMAN: Yes, your Honor. It's my  
6 understanding that the only injuries related to this incident  
7 that plaintiff is claiming or claimed throughout this case are  
8 the ones that you identified previously. We are not aware from  
9 any of the documents in our possession of any of these  
10 additional injuries. Plaintiff hasn't identified any of those  
11 and we don't believe those should be part of this case.

12 MR. MUNOZ: Your Honor, can I interject?

13 THE COURT: I'll read you again the complaint. Excuse  
14 me one second.

15 MR. MUNOZ: Your Honor, can I interject?

16 THE COURT: Hold on just one second. I want to look.

17 In the plaintiff's pretrial statement, he lists as his  
18 injuries two fractured ribs, partial loss of vision in his left  
19 eye, bleeding cuts on my left eyebrow that required stitches,  
20 one cut on my right forearm that required six stitches, and  
21 other smaller cuts and bruises. It took approximately two  
22 months for my fractured ribs to heal. I was in severe pain for  
23 many months and continue to this date to experience severe  
24 headaches that I did not experience before the incident.

25 This is the statement, Mr. Muñoz, that you gave in

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1 February in preparation for this trial. There is no reference  
2 in that statement to your knee, so your knee is not going to be  
3 part of this trial. Let me explain why, Mr. Muñoz.

4 MR. MUNOZ: OK.

5 THE COURT: As you know, you filed this lawsuit in  
6 2014.

7 MR. MUNOZ: Yes, ma'am.

8 THE COURT: You filed a complaint.

9 MR. MUNOZ: Yes, ma'am.

10 THE COURT: Everybody takes discovery after that. If  
11 I can find a copy of the complaint and look at the injuries  
12 claimed in the complaint. You identified what your injuries  
13 are and people get a chance to take discovery with respect to  
14 those.

15 MR. MUNOZ: OK.

16 THE COURT: You can't change that list, except for  
17 very good cause and with permission of the court, because on  
18 the eve of trial, it is too late to open discovery and examine  
19 a new set of injuries that are claimed.

20 MR. MUNOZ: Your Honor.

21 THE COURT: In your complaint, this is what you said  
22 at page 31: Two fractured ribs, a cut near your left eye that  
23 required stitches, and a cut on your right arm that required  
24 stitches. There was no reference to a loss of vision, the need  
25 for reading glasses, or anything about the left knee.

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1 Mr. Muñoz.

2 MR. MUNOZ: When Mr. Lichterman came to visit me in  
3 Clinton Correctional Facility, I had no attorney available. It  
4 was just him and a stenographer. I did mention to him about  
5 the vision, the loss of vision of my eye, and I did mention to  
6 him my left knee. I did mention that to him.

7 THE COURT: That's in your deposition?

8 MR. MUNOZ: Yeah. He probably didn't write that down  
9 because I surely did mention that too him.

10 THE COURT: Mr. Lichterman, was the deposition taken  
11 of the plaintiff?

12 MR. LICHTERMAN: Yes, a deposition was taken of the  
13 plaintiff.

14 THE COURT: And in that deposition, did he describe  
15 his injuries?

16 MR. LICHTERMAN: He did. I don't recall offhand  
17 whether he mentioned anything about a loss of vision or his  
18 knee.

19 THE COURT: Would you review that and write tomorrow  
20 to advise me regarding that?

21 MR. LICHTERMAN: Yes, your Honor.

22 THE COURT: And advise the plaintiff as well.

23 The defendants' motions in limine five, it's unclear  
24 to me what some of these refer to. Let's take them one by one.  
25 The first has to do with the fact that the plaintiff is suing



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1 just the four individual defendants and not the City of New  
2 York, and that the jury, it's irrelevant to the jury whether or  
3 not the City of New York may some day down the road indemnify  
4 an individual defendant for any damages that are awarded  
5 against a defendant in favor of the plaintiff.

6 I want to just make sure you understand, Mr. Muñoz,  
7 that the sole defendants here are the four individual  
8 defendants. Do you understand that?

9 MR. MUNOZ: Can you kind of, like, make that a little  
10 clearer? What you're trying to tell me is that --

11 THE COURT: Sure. You're asking the jury to find that  
12 one or all of these four defendants violated your rights by  
13 using excessive force against you, and if you find that, you're  
14 asking them to award money to you. Do you understand that?

15 MR. MUNOZ: Yes, I understand.

16 THE COURT: You can't argue that it's the City of  
17 New York who is going to pay you money. It is these four  
18 individual defendants. Do you understand that?

19 MR. MUNOZ: But I thought that New York NYPD belongs  
20 to New York City?

21 THE COURT: The NYPD is part of New York City. It is  
22 our police force. But you have not sued the City. To the  
23 extent that you tried to sue the City, that claim has been  
24 dismissed. The only claims at trial here are against these  
25 four individual officers. OK?

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1 MR. MUNOZ: Why was the claim to sue the City  
2 dismissed?

3 THE COURT: Judge Torres wrote about that. These are  
4 complicated legal issues, but the bottom line is that an  
5 individual officer who uses excessive force against a person is  
6 personally liable for doing that. The City is not  
7 responsibility unless the City was responsible because there  
8 was a pattern or practice of using excessive force in the way  
9 that was used against you. Judge Torres looked at that claim  
10 and dismissed the claim against the City of New York. OK?

11 MR. MUNOZ: So she favored the NYPD, in other words?

12 THE COURT: No. She left the four defendants in here.  
13 You are going to trial against the four defendant officers.  
14 OK?

15 MR. MUNOZ: OK, ma'am. Thank you for clearing that  
16 for me.

17 THE COURT: She just applied the law.

18 The next thing, the next motion is about disciplinary  
19 histories and prior misconduct. What are we talking about  
20 here, Mr. Lichterman? I have no idea what you're referring to.

21 MR. LICHTERMAN: Yes, your Honor.

22 During the course of discovery, CCRB records were  
23 produced to plaintiff. Those records, and to the extent  
24 plaintiff wants to discuss anything in those records or  
25 anything related to the office, any allegations against the

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1 officer related to prior misconduct, that is specifically what  
2 we are referring to that we would like for him to be precluded  
3 from discussing.

4 THE COURT: I want you to discuss this with Mr. Muñoz  
5 at the end of today's conference and see if this is an issue.

6 MR. LICHTERMAN: Yes, your Honor.

7 THE COURT: The next issue is, I think, irrelevant.  
8 It is that the plaintiff should be precluded from arguing that  
9 any force used against him in order to recover the gun and  
10 handcuff him was excessive. His claim is that the excessive  
11 force was used after he was handcuffed.

12 The next argument is that you should be able to  
13 cross-examine him about his mental illness and treatment.  
14 Again, theoretically, yes, but you need to define with  
15 specificity what you want to ask him about and I have to be  
16 able to rule that it is relevant to an issue of credibility or  
17 otherwise for the jury. You're going to provide a letter to me  
18 tomorrow.

19 MR. MUNOZ: Your Honor.

20 THE COURT: Yes, Mr. Muñoz.

21 MR. MUNOZ: Mr. Lichterman is trying to get at the  
22 point where he is trying to say that the mental illness and  
23 because of my drug addiction, he is trying to pinpoint, in  
24 other words, making me seem like drugs don't last in the  
25 system. In other words, I was high on crack, I admitted it,

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1 but crack don't last that long in the system.

2 So by the time when I was in the store, I knew exactly  
3 that I had robbed somebody and I knew exactly that I was  
4 turning myself in by replacing the firearm in my left pocket  
5 with the nose pointing down and the finger off the trigger, and  
6 at no point of view I had that firearm pointing towards  
7 endangering the life of an officer.

8 So what Mr. Lichterman is trying to get to a point  
9 where he is trying to say that because of my drug addiction and  
10 my mental illness, because it is a part of me, he is trying to  
11 make it seem like, in other words, that I didn't know what I  
12 was doing at that time when the officers was there and I didn't  
13 know what I was saying. That is what he is trying to get at,  
14 because he tried, when he went to Clinton for the hearing --

15 THE COURT: I am going to interrupt you, Mr. Muñoz,  
16 because we have so many talks yet to cover. There are more  
17 things I want to make sure you understand. But you're  
18 absolutely right, and thank you for pointing that out. That is  
19 what he is going to try to establish at trial, and you're going  
20 to have an opportunity to explain to the jury at trial why  
21 that's inaccurate and that you fully understood what was  
22 happening at the time and can remember it. The jury is going  
23 to have these two versions and two sets of arguments and they  
24 are going to have to make a decision. OK?

25 MR. MUNOZ: Yes, ma'am.

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1           THE COURT: We are going to get a letter tomorrow,  
2           which will be delivered to you, which will be more precise  
3           about what evidence and arguments with respect to drug use and  
4           mental illness the defendants are going to try to rely on at  
5           trial. I am going to rule yes or no with respect to each of  
6           the identifies issued.

7           Then there is the last motion in limine to cross the  
8           plaintiff about his prior convictions. Obviously the  
9           conviction for the robbery is admissible. It can come in with  
10          respect to the offense of conviction, the date conviction was  
11          imposed, and the sentence imposed as a result of the  
12          conviction.

13          To the extent that the defendants want to say that  
14          this plea was in full satisfaction of numerous arrest charges,  
15          as well as two subsequent arrests, that is not admissible.  
16          There are two convictions, as I understand it, the 2013  
17          conviction for robbery and the 2006 conviction for criminal  
18          sale of an illegal substance.

19          What was the sentence for the 2006 conviction?

20          MR. LICHTERMAN: That was 30 months, your Honor.

21          THE COURT: That brings us within the ten-year period?

22          MR. LICHTERMAN: Yes, your Honor.

23          THE COURT: You can inquire of the plaintiff with  
24          respect to that conviction as well, but again, the offense of  
25          conviction, the sentence imposed, and nothing more.

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1 MR. MUNOZ: Your Honor, can I interject with the 2013  
2 crime that I committed --

3 THE COURT: Yes.

4 MR. MUNOZ: -- was an undercover who gave me money to  
5 purchase narcotics and I took his money. That has nothing to  
6 do with no robbery, compared to the armed robbery that I did.  
7 It was a dropoff. It was supposed to be a buy-and-bust, for me  
8 to take the money and buy drugs and then charge as sales. That  
9 was in 2013. I believe it got acquitted with the 2011 crime,  
10 when I took the ten years. That has nothing to do with no  
11 robbery. The only robbery I have on my record, really, this is  
12 the armed robbery that I committed in 2011, and I regret it.

13 THE COURT: Mr. Lichterman, in your letter of  
14 tomorrow, list precisely which convictions you wish to offer at  
15 trial as impeachment or question the plaintiff about at trial  
16 so we have precision here. OK? Again, the offense of  
17 conviction, the date of conviction, the sentence imposed.

18 MR. LICHTERMAN: Yes, your Honor.

19 THE COURT: Thank you.

20 So now I am going to speak to you, Mr. Muñoz, a little  
21 bit about how the trial is going to operate. It is going to  
22 start Monday. We will meet Monday at 9:30. We will have about  
23 a half hour to discuss any open issues with each other.

24 We are going to choose a jury. We are going to choose  
25 eight jurors. I am going to give them each a questionnaire and

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1 ask questions of them, and then each of you will have an  
2 opportunity to identify three people you don't want to sit on  
3 the jury.

4 MR. MUNOZ: That's pertaining to me or to the counsel?

5 THE COURT: Both. You get to name three people you  
6 don't want on the jury, and the defendants get to name three  
7 people they don't want on the jury. We are going to put in the  
8 jury box 14 people and six of them are going to be excused,  
9 three that you choose to strike and three that the defendants  
10 choose to strike. We are going to be left with eight people.

11 After we choose a jury, everybody is going to have a  
12 chance to make an opening statement. You will, Mr. Muñoz, and  
13 so won't defense counsel.

14 MR. MUNOZ: Repeat that, please, your Honor.

15 THE COURT: Sure.

16 After we pick a jury, you get a chance to talk to the  
17 jury and make an opening statement. This is your chance to  
18 tell the jury what you think the evidence is going to show.  
19 Then defense counsel gets to stand up and make an opening  
20 statement and describe to the jury what the defense thinks the  
21 evidence is going to show.

22 After those two statements, you, Mr. Muñoz, get to  
23 call witnesses. Do you know yet if you want to take the stand  
24 first or if you want to call the officers first as witnesses?

25 MR. MUNOZ: I believe I'll take it first.

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1 THE COURT: I am going to give you some suggestions  
2 about that in just a few moments. I just want to describe the  
3 structure.

4 You're planning to call each of the officers as  
5 witnesses or not on your case?

6 MR. MUNOZ: Yeah. I want all the officers to be  
7 present.

8 THE COURT: Good. You're going to be call each of  
9 them. If you do, that will probably be the whole trial. But  
10 the defense, if you don't, will be able to call any officer you  
11 don't call of these four. Your choice entirely.

12 Then after all the evidence is in, you will get a  
13 second chance to talk to the jury directly, that is called  
14 summation or closing argument, and so will defense counsel have  
15 a chance to talk to the jury directly. That is called, again,  
16 closing argument or summation.

17 Because you have the burden of proof here, Mr. Muñoz,  
18 to prove that the officers used excessive force against you,  
19 you will speak to the jury last. Then I am going to give the  
20 jury the charge as to the law, and then they will deliberate  
21 and reach a verdict. That is sort of the outline of the whole  
22 trial, OK?

23 Now let me talk to you a little bit about some things  
24 to keep in kind when you're representing yourself at trial. I  
25 think it's often helpful to think about this as wearing two



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1 hats. One hat you will be testifying to the jury under oath  
2 from the witness stand, giving them your best recollection of  
3 what happened, describing for the jury what injuries you  
4 suffered, how you got them, and how they affect you. That is  
5 witness testimony.

6 I think it would be very helpful probably for you to  
7 make an outline of all the topics you want to cover. Not to  
8 write out your testimony, but just to make sure that you cover  
9 each important event that you want to tell the jury about.  
10 Then you can take that piece of paper and look at it on  
11 occasion when you're talking to them and make sure that you  
12 have covered everything that is important for you to tell them.

13 MR. MUNOZ: So, in other words, I can put them in  
14 order, my arguments, and I'll be able to look at my paper and  
15 make sure that I can cover all the arguments that I need to  
16 proceed?

17 THE COURT: Yes, though I wouldn't call it arguments.  
18 This is the chance when you're under oath on the witness stand  
19 to describe the facts, what you saw, what you felt, what you  
20 heard, what you said that is relevant to the charges here. You  
21 could give the jury a little background about your life, if you  
22 would like. You can describe for them how that -- I am just  
23 using an example here -- how it felt to have those two broken  
24 ribs and how long it took for them to heal. But that's the  
25 time when you're speaking factually to them about something you

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1 know because you certainly experienced it. OK? It's under  
2 oath.

3 MR. MUNOZ: When will I know when to say that?  
4 Because, here I go again, I don't have a lot of legal knowledge  
5 here. I am pro se and this is my first time. How would I know  
6 when to say that?

7 THE COURT: Well, I am going to help you that way in  
8 this section. I just asked you if you wanted to testify first  
9 or call an officer to testify first, and you told me you would  
10 like to testify first. After opening statements are done, I  
11 will ask you, Mr. Muñoz, do you want a witness to call on your  
12 behalf? You will say to me in open court in front of the jury,  
13 Your Honor, I would like to testify first. Then you'll walk up  
14 here and take the witness stand. I'll place you under oath,  
15 swear you in. You'll sit down, you'll face the jury, and  
16 you'll give them your testimony. Do you understand?

17 MR. MUNOZ: Sort of like a story of what happened that  
18 day?

19 THE COURT: You've got it.

20 MR. MUNOZ: Yes, ma'am.

21 THE COURT: Good. Again, I think it is very helpful,  
22 because you won't have a lawyer placing questions to you, to  
23 make, just on one piece of paper, an outline to make sure that  
24 you cover everything that you want to tell the jury about what  
25 happened that day or about your life generally. But the focus,

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1 of course, is on the events of that day and the injuries you  
2 suffered. That's one hat you're wearing. You're wearing the  
3 hat of the person that experienced those events that day. You  
4 give that testimony to the jury under oath.

5 But there is a second hat you're wearing at this  
6 trial, and that is you're representing yourself like a lawyer  
7 would represent you. When you're doing that, you get a chance,  
8 for instance, to speak to the jury in an opening or closing  
9 statement or to ask the defendants questions when they take the  
10 stand.

11 Now, this is a very important distinction, and I want  
12 to make sure I am explaining it to you in a way that you can  
13 understand, Mr. Muñoz. The only time you can tell the jury  
14 precisely what happened on that day is when you're under oath  
15 and testifying from that witness stand. Do you understand  
16 that?

17 MR. MUNOZ: Yes. When I approach as the first  
18 witness, right, ma'am?

19 THE COURT: Yes. When you're making an opening  
20 statement to the jury or a closing statement to the jury or  
21 examining one of the officers, that's not the time for you to  
22 give testimony. That's the time you're wearing your attorney  
23 hat. That's the time you're speaking. And some people find it  
24 helpful to do this, to speak like in the third person, to say,  
25 Mr. Muñoz will tell you, Mr. Muñoz, you know, didn't you say to

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1 Mr. Muñoz, didn't you hit Mr. Muñoz?

2 When you're on the witness stand and testifying under  
3 oath, you can tell the jury, I was hit. This is how I hurt.  
4 This is what my broken ribs felt like. OK?

5 Now, we'll take breaks as necessary during the trial  
6 to make sure that you're not confused by this. I'll try to  
7 give you the appropriate guidance. But essentially the only  
8 time you can tell the jury precisely what happened is when  
9 you're under oath on the witness stand. OK?

10 MR. MUNOZ: I understand that, ma'am. Thank you.

11 THE COURT: Now, this applies to both sides. I don't  
12 want either of you to object when a question is placed or an  
13 answer is given in the middle of a sentence. Let the whole  
14 sentence, the whole question, be placed or the whole answer be  
15 given, and then you can object.

16 How do you object? You just say the word "objection."  
17 You don't have to spell it out. I'll be listening carefully.  
18 I'll try to understand precisely what the objection might be  
19 and I'll give you a ruling that allows the witness to answer or  
20 not. If I'm confused about what the basis of the objection  
21 might be, I'll make sure we take a break and I get a chance to  
22 ask you exactly what the basis of the objection is.

23 Mr. Muñoz, you're not going to be able to ask the jury  
24 to give you a precise amount of money in your summation.  
25 You're not going to be able to say this injury is worth this

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1 amount of money. OK? But you can explain to them and refer to  
2 your own testimony, you can remind them of what you testified  
3 about and how you suffered, but you can't put a dollar figure  
4 on it. Do you understand what I'm saying?

5 MR. MUNOZ: Yes, your Honor. Yes, ma'am.

6 THE COURT: Good.

7 Let me ask you, Mr. Lichterman, is there anything else  
8 that we need to cover from your point of view?

9 MR. LICHTERMAN: No, your Honor.

10 THE COURT: Mr. Lichterman, tomorrow you're going to  
11 help us, both the plaintiff and me, get better prepared for  
12 this trial. You're going to get him some documents that he  
13 needs. You're going to write a letter that identifies with  
14 some precision precisely what these medical issues are and the  
15 convictions are and the other things we talked about, so that  
16 I can rule appropriately on what might be admissible. OK?

17 MR. LICHTERMAN: Yes, your Honor.

18 THE COURT: Thank you.

19 Mr. Muñoz, did you have any questions for me today?

20 MR. MUNOZ: Your Honor, it's been a pleasure. I would  
21 like to say, with all respect, thank you.

22 Also, one question for you. Am I allowed to bring the  
23 paperwork that I have with me during trial?

24 THE COURT: Yes. Now, I am going to have to  
25 coordinate with my deputy and the prison facility. Hold on one

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1 second.

2 (Pause)

3 We are going to break in a moment. If there are any  
4 documents that you think you left back in your prison facility  
5 and don't have with you here, make sure you mention that to  
6 Mr. Lichterman so he can get you copies tomorrow. It would be  
7 important for you to be able to bring your documents with you  
8 back and forth from your cell to court, including an outline of  
9 anything you want to tell the jury.

10 Anything else, Mr. Muñoz?

11 MR. MUNOZ: No, ma'am. Thank you.

12 THE COURT: I'll see everybody Monday morning at 9:30.

13 Thank you, all.

14 (Adjourned)